S.B. CIVIL WRIT PETITION NO.2626/2003
Pawan Kumar
vs
State of Rajasthan & Ors.

DATE OF ORDER:10.5.2006

HON'BLE MR.R.C. GANDHI, J.

Mr.HS Sidhu, for the petitioner.
Mr.OP Boob, Dy.GA, for the respondent-State

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(ORAL)

The petitioner seeks a direction to the respondents to pay amount of pension, gratuity, arrears of pay, amount of GP fund and insurance as shown in the order dated 8.5.2003, Annex.P/8 annexed alongwith the petition, which is a communication issued by the Head Master, Government Secondary School, Ransi Gaun, Jodhpur.

It is averred in the petition that Smt. Ram Kanwari was serving as Class-IV employee with the respondents. During service, she expired on 4.9.1999. During her life time, she has adopted the petitioner as her son. On the death of the deceased Smt. Ram Kanwari, the petitioner applied to the respondents for release of retiral benefits. The respondents did not pay it and compelled by such circumstances, the petitioner filed the writ petition no.1453/2000, which was disposed of vide judgment dated 30.8.2001 directing the petitioner to secure this money. The petitioner must obtain a succession certificate from the civil

court. The petitioner obtained the succession certificate, which is annexed with the petition and has again approached this Court seeking the aforesaid directions.

The respondents have filed reply stating therein that the amount of GPF and State Insurance fund has been released in favour of Nand Kishore Arora, who was nominated by Smt. Ram Kanwari as her nominee to receive the amount. The remaining retiral benefits are on account of pay fixation are Rs.14,257/, leave enachment of Rs.31,082/-and Gratuity of Rs.1,36,091/-. The respondents have stated that the gratuity amount cannot be released in peace meal.

Heard the learned counsel for the parties and perused the record.

The petitioner has made out before the Court that he being the adopted son of the deceased Smt. Ram Kanwari and having issued succession certificate in favour of the petitioner by the District Collector, is entitled to seek retiral benefits. The succession certificate has been issued to the extent of the amount as conveyed to the petitioner by the respondent no.4, Head Master, Govt. Secondary School, Ransi Gaun, Jodhpur vide his letter dated 8.5.2003. Later on, the respondents have indicated in the reply that the amount of retrial benefits is more than what has been conveyed to the petitioner. There is no difficulty in releasing the amount of retrial benefits withheld by the respondents, except the amount paid to Nand Kishore Arora. Once the succession certificate was produced by the petitioner before the respondents, they would have no other alternative but to release the amount. There is no other person claiming this amount except the

petitioner being the adopted son. The respondents are under obligation to release the retiral benefits in favour of the petitioner, who is rightful claimant.

The writ petition is accordingly allowed and the respondents are directed to make payment of the amount to the petitioner as referred in the succession certificate. The gratuity amount to the extent of the succession certificate shall also be released in favour of the petitioner and for the remaining amount, the petitioner may seek the revised succession certificate to that extent and produce it before the respondents. As and when the same is produced, the respondents shall release the said balance amount.

Learned counsel for the petitioner has also submitted that the petitioner is also entitled to the amount which has been paid by the respondents to Nand Kishore Arora in his capacity as nominee. Ordinarily, the nominee has the authority to receive the amount and the respondents cannot refuse to pay to the nominee. If the claimant feels that he has also a right to receive the amount instead of Nand Kishore Arora, the court is not in position to pass a decreed order on such disputed facts and to settle it in writ jurisdiction. However, the petitioner is at liberty to seek release of the amount by filing a suit for recovery before the competent forum, if so advised.

So far as interest part is concerned, the petitioner has stated in para no.2 of the writ petition that on receipt of the succession certificate, it was produced before the respondents with the request to release the retrial benefits. The respondents have not denied it in their

reply and stated that the GP fund amount and the State Insurance amount has been released to the nominee Nand Kishore Arora and the gratuity could not be paid being in peace meal. The respondents have not shown any law providing that the gratuity amount cannot be released in peace meal. The plea of the respondents, therefore, is not justified and have incurred liability of interest as has been held by this Court that if the retiral benefits are not paid within a period of three months from the date of retirement, the retiree shall be entitled to interest thereon. The petitioner has not mentioned any specific date on which the succession certificate was made available to the respondents for release of retiral benefits. Therefore, a specific direction cannot be issued. However, the benefit of interest cannot be denied also, on this count, as it has bearing in the record of the respondents. The respondents will see that on which date, they received the succession certificate from the petitioner and pay interest @ 6% on the retiral benefits indicated in the succession certificate from onwards three months from the date of receipt of the succession certificate.

(R.C. Gandhi), J.

c.p.goyal/-